IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9501 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH R BHATT

Versus

TAPOVAN SANSKARDHAM VIDYALAYA'

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/11/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Due to the scarcity of work in the school, surplus teaching staff naturally would have bene there and the management of the school has to take decision to

terminate the services of the surplus staff. That is how this dispute has arisen.

#. It is the case of the petitioner that he is not the junior most teacher and even if surplus staff maybe there because of closure of classes, his services cannot be dispensed with, but for which, an inquiry has to be held and the petitioner has been given a notice by the management to hold an inquiry on this aspect. However, instead of facing the inquiry, what the petitinoer did is to approach the Gujarat Primary Education Tribunal, Ahmedabad, that though only on apprehended action and order, this application has been filed by petitioner, the Tribunal granted initially interim relief in his favour but after contest of the same by the management and hearing the parties to the matter, that interim relief came to be vacated. Hence this special civil application before this court.

#. The learned counsel for the respondents, relying on the decision of the Apex court in the case of Air India Ltd. v. M. Yogeshwar Raj, reported in (2000) 5 SCC 467 contended that it is not the case where the services of the petitioner have been terminated but only a notice has been given and that has been challenged by petitioner leaving apart the fact whether it could have been challenged or not as there is no concluded action against the petitioner, otherwise also, the Tribunal could not have granted interim relief and rightly on hearing the management, it has been vacated. Lastly, it is contended that in case interim relief is not granted in favour of petitioner, he will not suffer any irreparable injury which cannot be compensated in terms of money. He also made reference to certain decision of Hon'ble Supreme court as well as this Court.

#. The learned counsel for the petitioner contended that it is a case where the management has picked up the petitioner as he is not Jain. All other teachers junior to him are Jains and to favour them the management has only proceeded against the petitioner. It is contended that the petitioner is not the junior most teacher in the school as a result of which on closure of classes his services are to be terminated.

#. These are the matters of inquiry for which the petitioner has ample opportunity to contest before the management. It is the stage where notice has been given to the petitioner but instead of facing inquiry, he has chosen to approach the remedy before the Tribunal which is wholly uncalled for. It is not a case where any

concluded action has been taken by the management. An application before the Tribunal, I have my own reservation though I am not expressing any final opinion, is difficult to entertain against show cause notice. Be that as it may, it is not a case where interim relief could have been granted in favour of petitioner and rightly interim relief which has been granted earlier by Tribunal has been vacated. If in such cases interim relief is granted at this stage, then it will result in granting of main relief though the services of the petitioner otherwise have not been terminated. The management is yet to decide the issues which are raised or are to be raised by petitioner and then to take a final decision. It is difficult to pre-empt the decision of the management on facts and there cannot be any justification to grant any interim relief at this stage. Moreover, in case what the petitioner feels and contends that he has been made a scapegoat and the action if ultimately taken against him is illegal, while challenging that action, it is always open to him to apply for grant of interim relief and that may be the stage where the Tribunal may consider the matter and pass the order in accordance with law but at this stage, no interim relief can be granted and rightly it has not been granted. The order of the Tribunal is perfectly legal and justified to which no interference of this court is called for under Article 226 of the Constitution of India.

#. As a result of aforesaid discussion, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. The petitioner is directed to pay costs of this petition to the respondents which is quantified at Rs.1,000/=.

.....

(sunil)